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John Marshall

By

James Bradley Thayer



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JOHN MARSHALL

BY

JAMES BRADLEY THAYER

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1870

1871

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1873

## JOHN MARSHALL.<sup>1</sup>

It was one hundred years ago on the 4th of February since the Supreme Court of the United States first sat in the new Capitol at Washington, that "wilderness city, set in a mudhole," of whose beginnings we have all lately been reading. The court sat with a new Chief Justice, John Marshall, of Virginia.

At that time he was something over forty-five years old, for he was born on September 24, 1755. His home had al-

ways been in Virginia. The first twenty years of his life were passed in that part of Prince William County which became, a few years after Marshall's birth, the new, wide-spreading, frontier county of Fauquier, — so named, after a Virginia fashion, from the new royal governor of 1758. He was born in the eastern part of it, and after ten years, or so, lived in the western part, at Oakhill and in the neighborhood, just under the Blue Ridge.

<sup>1</sup> What follows was, in part, contained in an address before the Harvard Law School and the Suffolk Bar, at Cambridge, on February 4, 1901, the centennial anniversary of the inau-

guration of Chief Justice Marshall. The consideration of the legal side of this great man is necessarily omitted here.

They show you still at Midland, on the Southern Railroad, a little south of Manassas, a small, rude heap of bricks and rubbish, as being all that is left of the house where Marshall was born; and children on the farm reach out to you a handful of the bullets with which that sacred spot and the whole region were thickly sown, before a generation had passed, after his death. Marshall's education was got from his father, from such teachers as the neighborhood furnished, and, for about a year, at a school in Westmoreland County, where his father and George Washington had attended, and where James Monroe was his own schoolmate.

His father, Thomas Marshall, — great-grandson of John Marshall, a Royalist captain of cavalry, who had come to Virginia in 1650, — a man of good stock, of a cultivated mind, enterprise, and strong character, had been a neighbor and friend of Washington in Westmoreland County, on the Potomac, where both were born; and had served under him as a surveyor of the estates of Lord Fairfax, and afterwards as an officer in the French War and the War of Independence. He became colonel of a Continental regiment, in which his son John was a lieutenant, and afterwards a captain; and Colonel Marshall showed distinguished capacity and courage. John Marshall loved and admired him, and declared him to be a far abler man than any of his sons. He took great care in the education of his children, among whom John was the oldest of fifteen. His wife, Mary Randolph Keith, was the daughter of a Scotch clergyman, who had married one of that Randolph family so famous in the history of Virginia. As I have said, all his later youth was passed in the mountain region, under the Blue Ridge. Judge Story declared that it was to the hardy, athletic habits of his youth among the mountains, operating, we may well conjecture, upon a happy physical inheritance, "that he probably owed that robust

and vigorous constitution which carried him almost to the close of his life with the freshness and firmness of manhood."

The farmhouse that Marshall's father built at Oakhill is still standing, an unpretending, small, frame building, having connected with it now, as a part of it, another house built by Marshall's son Thomas. At one time the farm comprised an estate of six thousand acres. Since 1865 it has passed out of the hands of the family. It is beautifully placed on high, rolling ground, looking over a great stretch of fertile country, and along the chain of the Blue Ridge, close by. To this region, where his children and kindred lived, about a hundred miles from Richmond, Marshall delighted to resort in the summer, all his life long. In the autumn of 1807, after the Burr trial, he writes to a friend, "The day after the commitment of Colonel Burr for a misdemeanor, I galloped to the mountains." "I am on the wing," he writes to Judge Story in 1828, "for my friends in the upper country, where I shall find rest and dear friends, occupied more with their farms than with party politics."

When Marshall was about eighteen years old he began to study Blackstone; but he quickly dropped it, for the troubles with Great Britain thickened, and, like his neighbors, he prepared for fighting. The earliest personal description of Marshall that we have belongs to this period. It is preserved in Horace Binney's admirable address at Philadelphia, after Marshall's death. He gives it from the pen of an eyewitness, a "venerable kinsman" of Marshall. News had come, in May, 1775, of the fighting at Concord and Lexington. The account shows us the youth, as lieutenant, drilling a company of soldiers in Fauquier County: —

"He was about six feet high, straight, and rather slender, of dark complexion, showing little if any rosy red, yet good health, the outline of the face nearly a circle, and, within that, eyes dark to

blackness, strong and penetrating, beaming with intelligence and good nature; an upright forehead, rather low, was terminated in a horizontal line by a mass of raven-black hair, of unusual thickness and strength. The features of the face were in harmony with this outline, and the temples fully developed. The result of this combination was interesting and very agreeable. The body and limbs indicated agility rather than strength, in which, however, he was by no means deficient. He wore a purple or pale blue hunting shirt, and trousers of the same material fringed with white. A round black hat, mounted with the buck's tail for a cockade, crowned the figure and the man. He went through the manual exercise by word and motion, deliberately pronounced and performed in the presence of the company, before he required the men to imitate him; and then proceeded to exercise them with the most perfect temper. . . .

"After a few lessons the company were dismissed, and informed that if they wished to hear more about the war, and would form a circle about him, he would tell them what he understood about it. The circle was formed, and he addressed the company for something like an hour. He then challenged an acquaintance to a game of quoits, and they closed the day with foot races and other athletic exercises, at which there was no betting."

"This," adds Mr. Binney, "is a portrait, my fellow citizens, to which, in simplicity, gayety of heart, and manliness of spirit, in everything but the symbols of the youthful soldier, and one or two of those lineaments which the hand of time, however gentle, changes and perhaps improves, he never lost his resemblance. All who knew him well will recognize its truth to nature."

In the war, Marshall served, as might be expected, with courage and fidelity. He was in the first fighting in Virginia, which was in the fall of 1775, at Nor-

folk; afterwards he served in New Jersey, Pennsylvania, and New York; and again in Virginia, toward the end of the war. He was at Valley Forge, in the fighting at the Brandywine, Germantown, Monmouth, Stony Point, and Powles Hook, between 1776 and 1779. He served often as judge advocate, and in this way was brought into personal relations with Washington and Hamilton. A fellow officer and messmate describes him, during the dreadful winter at Valley Forge, as neither discouraged nor disturbed by anything, content with whatever turned up, and cheering everybody by his exuberance of spirits and "his inexhaustible fund of anecdote." He was "idolized by the soldiers and his brother officers."

President Quincy gives us a glimpse of him at this period, as he heard him described at a dinner with John Randolph and a large company of Virginians and other Southern gentlemen. They were talking of Marshall's early life and his athletic powers. "It was said," he relates, "that he surpassed any man in the army: that when the soldiers were idle at their quarters, it was usual for the officers to engage in matches at quoits, or in jumping and racing; that he would throw a quoit farther, and beat at a race any other; that he was the only man who, with a running jump, could clear a stick laid on the heads of two men as tall as himself. On one occasion he ran in his stocking feet with a comrade. His mother, in knitting his stockings, had the legs of blue yarn and the heels of white. This circumstance, combined with his uniform success in the race, led the soldiers, who were always present at these races, to give him the *sobriquet* of 'Silver-Heels,' the name by which he was generally known among them."

Toward the end of 1779, owing to the disbanding of Virginia troops at the end of their term of service, he was left without a command, and went to Virginia to await the action of the legislature as to

raising new troops. It was a fortunate visit ; for at Yorktown he met the young girl who, two or three years later, was to become his wife ; and he was also able to improve his leisure by attending, for a few months in the early part of 1780, two courses of lectures at the college, on law and natural philosophy. This was all of college or university that he ever saw ; but later he received their highest honors from several universities. Harvard made him doctor of laws in 1806. Marshall's opportunity for studying law, under George Wythe, at William and Mary College, seems to have been owing to a change in the curriculum, made, just at that time, at the instance of Jefferson, governor of the state, and, in that capacity, visitor of the college. The chair of divinity had just been abolished, and one of law and police, and another of medicine, were substituted. And on December 29 the faculty voted that, "for the encouragement of science, a student, on paying annually 1000 pounds of tobacco, shall be entitled to attend any school of the following Professors, viz.: of Law and Police ; of Natural Philosophy and Mathematics," etc. Marshall chose the two courses above named ; he must have been one of the very first to avail himself of this new privilege. He remained only one term. In view of what was to happen by and by, it is interesting to observe that his opportunity for an education in law came, thus, through the agency of Thomas Jefferson.

The records of the Phi Beta Kappa Society at William and Mary College, where that now famous society had originated less than a year and a half before, show that on the 18th of May, 1780, "Captain John Marshall, being recommended as a gentleman who would make a worthy member of the society, was balloted for and received ;" and three days later he was appointed, with others, "to declaim the question whether any form of government is more favorable to public vir-

tue than a Commonwealth." Bushrod Washington and other well-known names are found among his associates in this chapter, which has been well called "an admirable nursery of patriots and statesmen."

It was in the summer of 1780 that Marshall was licensed to practice law.

During this visit to Virginia, as I have said, he met at Yorktown the little lady, fourteen years old, who was to become his wife three years later, and the mother of his ten children,<sup>1</sup> and was to receive from him the most entire devotion until the day of her death at Christmas, in 1831. Some letters of her older sister, Mrs. Carrington, written to another sister, have lately been printed, which give us a glimpse of Captain Marshall in his twenty-fifth year. These ladies were the daughters of Jaquelin Ambler, formerly collector of customs at Yorktown, and then treasurer of the colony, and living in that town, next door to the family of Colonel Marshall. Their mother was that Rebecca Burwell for whom, under the name of "Belinda," Jefferson had languished, in his youthful correspondence of some twenty years before. The girls had often heard the captain's letters to his family, and had the highest expectations when they learned that he was coming home from the war. They were to meet him first at a ball, and were contending for the prize beforehand. Mary, the youngest, carried it off. "At the first introduction," writes her sister, who was but one year older, "he became devoted to her." "For my own part," she adds, "I felt not the smallest wish to contest the prize with her. . . . She, with a glance, divined his character, . . . while I, expecting an Adonis, lost all desire of becoming agreeable in his eyes when I beheld his awkward, unpolished manner and total negligence of person. How trivial now seem all such objections !" she exclaims, writing in 1810, and going on to speak with the utmost

<sup>1</sup> Only six of his children grew to full age.



admiration of his relations to herself and all her family, and, above all, to his wife. "His exemplary tenderness to our unfortunate sister is without parallel. With a delicacy of frame and feeling that baffles all description, she became, early after her marriage, a prey to extreme nervous affection, which, more or less, has embittered her comfort through her whole life; but this has only seemed to increase his care and tenderness, and he is, as you know, as entirely devoted as at the moment of their first being married. Always and under every circumstance an enthusiast in love, I have very lately heard him declare that he looked with astonishment at the present race of lovers, so totally unlike what he had been himself. His never failing cheerfulness and good humor are a perpetual source of delight to all connected with him, and, I have not a doubt, have been the means of prolonging the life of her he is so tenderly devoted to."

"He was her devoted lover to the very end of her life," another member of his family connection has said. And Judge Story, in speaking of him after his wife's death, described him as "the most extraordinary man I ever saw for the depth and tenderness of his feelings."

A little touch of his manner to his wife is seen in a letter, which is in print, written to her from the city of Washington, on February 23, 1825, in his seventieth year. He had received an injury to his knee, about which Mrs. Marshall was anxious. "I shall be out," he writes, "in a few days. All the ladies of the secretaries have been to see me, some more than once, and have brought me more jelly than I could eat, and many other things. I thank them, and stick to my barley broth. Still I have lots of time on my hands. How do you think I beguile it? I am almost tempted to leave you to guess, until I write again. You must know that I begin with the ball at York, our splendid assembly at the Palace in Williamsburg, my visit to

Richmond for a fortnight, my return to the field, and the very welcome reception you gave me on my arrival at Dover, our little tiffs and makings-up, my feelings when Major A. was courting you, my trip to the Cottage [the Ambler home in Hanover County, where the marriage took place], — the thousand little incidents, deeply affecting, in turn."

This "ball at York" was the one of which Mrs. Carrington wrote; and of the "assembly at the Palace" she also gave an account, remarking that "Marshall was devoted to my sister."

Miss Martineau, who saw him the year before he died, speaks with great emphasis of what she calls his "reverence" and his affectionate respect for women. There were many signs of this all through his life. Even in the grave and too monotonous course of his Life of Washington, one comes now and then upon a little gleam of this sort, that lights up the page; as when he speaks of Washington's engagement to Mrs. Custis, a lady "who to a large fortune and a fine person added those amiable accomplishments which . . . fill with silent but unceasing felicity the quiet scenes of private life." When he is returning from France, in 1798, he writes gayly back from Bordeaux to the Secretary of Legation at Paris: "Present me to my friends in Paris; and have the goodness to say to Madame Vilette, in my name and in the handsomest manner, everything which respectful friendship can dictate. When you have done that, you will have rendered not quite half justice to my sentiments." "He was a man," said Judge Story, "of deep sensibility and tenderness; . . . whatever may be his fame in the eyes of the world, that which, in a just sense, was his brightest glory was the purity, affectionateness, liberality, and devotedness of his domestic life."

Marshall left the army in 1781, when most of the fighting in Virginia was over; he began practice in Fauquier County,

when the courts were opened, after Cornwallis's surrender, in October of that year.

Among his neighbors he was always a favorite. In the spring of 1782 he was elected to the Assembly, and in the autumn to the important office of member of the Executive Council. "Young Mr. Marshall," wrote Edmund Pendleton, presiding judge of the Court of Appeals, to Madison, in November of that year, "is elected a councilor. . . . He is clever, but I think too young for that department, which he should rather have earned, as a retirement and reward, by ten or twelve years of hard service." But, whether young or old, the people were forever forcing him into public life. Eight times he was sent to the Assembly; in 1788 to the Federal Convention of Virginia, and in 1798 to Congress. Add to this his service as envoy to France in 1797-1798, and as Secretary of State in 1800-1801.

Unwelcome as it was to him, almost always, to have his brilliant and congenial place and prospects at the bar thus interfered with, we can see now what an admirable preparation all this was for the great station for which, a little later, to the endless benefit of his country, he was destined. What drove him into office so often was, in a great degree, that delightful and remarkable combination of qualities which made everybody love and trust him, even his political adversaries, so that he could be chosen when no one else of his party was available. In this way, happily for his country, he was led to consider, early and deeply, those difficult problems of government that distressed the country in the dark period after the close of the war, and during the first dozen years of the Federal Constitution.

As regards the effect of his earlier experience in enlarging the circle of a patriot's thoughts and affections, he himself has said: "I am disposed to ascribe my devotion to the Union, and to

a government competent to its preservation, at least as much to casual circumstances as to judgment. I had grown up at a time . . . when the maxim 'United we stand, divided we fall' was the maxim of every orthodox American; and I had imbibed these sentiments so thoroughly that they constituted a part of my being. I carried them with me into the army, where I found myself associated with brave men from different states who were risking life and everything valuable in a common cause, . . . and where I was confirmed in the habit of considering America as my country and Congress as my government." It was this confirmed "habit of considering America as my country," communicated by him to his countrymen, which enabled them to carry through the great struggle of forty years ago, and to save for us all, North and South, the inestimable treasure of the Union.

After Marshall's marriage, in January, 1783, he made Richmond his home for the rest of his life. It was still a little town, but it had lately become the capital of the state, and the strongest men at the bar gradually gathered there. Marshall met them all. One has only to look at the law reports of Call and Washington to see the place that he won. He is found in most of the important cases. In his time no man's name occurs oftener, probably none so often.

At first, he had brought from the army, and from his home on the frontier, simple and rustic ways which surprised some persons at Richmond, whose conception of greatness was associated with very different models of dress and behavior. "He was one morning strolling," we are told, "through the streets of Richmond, attired in a plain linen roundabout and shorts, with his hat under his arm, from which he was eating cherries, when he stopped in the porch of the Eagle Hotel, indulged in a little pleasantry with the landlord, and then

passed on." A gentleman from the country was present, who had a case coming on before the Court of Appeals, and was referred by the landlord to Marshall as the best lawyer to employ. But "the careless, languid air" of Marshall had so prejudiced the man that he refused to employ him. The clerk, when this client entered the court room, also recommended Marshall, but the other would have none of him. A venerable-looking lawyer, with powdered wig and in black cloth, soon entered, and the gentleman engaged him. In the first case that came up, this man and Marshall spoke on opposite sides. The gentleman listened, saw his mistake, and secured Marshall at once; frankly telling him the whole story, and adding that while he had come with one hundred dollars to pay his lawyer, he had but five dollars left. Marshall good-naturedly took this, and helped in the case. In the Virginia Federal Convention of 1788, at the age of thirty-three, he is described, rising after Monroe had spoken, as "a tall young man, slovenly dressed in loose summer apparel. . . . His manners, like those of Monroe, were in strange contrast with those of Edmund Randolph or of Grayson."

In such stories as these, one is reminded, as he is often reminded, of a resemblance between Marshall and Lincoln. Very different men they were, but both thorough Americans, with unborrowed character and manners, and a lifelong flavor derived from no other soil.

At the height of Marshall's reputation, in 1797, a French writer, who had visited Richmond lately, in speaking of Edmund Randolph, says, "He has a great practice, and stands, in that respect, nearly on a par with Mr. J. Marshall, the most esteemed and celebrated counselor of this town." He mentions Marshall's annual income as being four or five thousand dollars. "Even by his friends," it is added, "he is taxed with

some little propensity to indolence, but he nevertheless displays great superiority when he applies his mind to business." Another contemporary, who praises his force and eloquence in speaking, yet says: "It is difficult to rouse his faculties. He begins with reluctance, hesitation, and vacancy of eye. . . . He reminds one of some great bird, which flounders on the earth for a while before it acquires impetus to sustain its soaring flight." And finally, William Wirt, who was seventeen years Marshall's junior, and came to the bar in 1792, when Marshall was nearly at the head of it, writing anonymously in 1804, describes him as one "who, without the advantage of person, voice, attitude, gesture, or any of the ornaments of an orator, deserves to be considered as one of the most eloquent men in the world." He attributes to him "one original and almost supernatural faculty, . . . of developing a subject by a single glance of his mind. . . . His eyes do not fly over a landscape and take in its various objects with more promptitude and facility than his mind embraces and analyzes the most complex subject. . . . All his eloquence consists in the apparently deep self-conviction and the emphatic earnestness and energy of his style, the close and logical connection of his thoughts, and the easy gradations by which he opens his lights on the attentive minds of his hearers."

In 1795 he declined the office of Attorney General of the United States, and in 1796 that of Minister to France, both offered him by Washington. When President Adams persuaded him in 1797 to go, with Pinckney and Gerry, as envoy to France, he wrote to Gerry of "General Marshall" (as he was then called, from his rank of brigadier general, since 1793, in the Virginia militia), "He is a plain man, very sensible, cautious, guarded, and learned in the law of nations." The extraordinary details of that unsuccessful six months' attempt to come to terms with France are found in Marshall's

very able dispatches and in the diary which he kept ; for, with the instinct of a man of affairs, he remembered that "a note is worth a cartload of recollections." His own part in the business was marked by great moderation and ability, and on his return, in 1798, he was received at Philadelphia with remarkable demonstrations and the utmost enthusiasm. A correspondent of Rufus King, writing from New York in July of that year, says, "No two men can be more beloved and honored than Pinckney and Marshall ;" and again in November : "Saving General Washington, I believe the President, Pinckney, and Marshall are the most popular characters now in our country. There is a certain something in the correspondence of Pinckney and Marshall . . . that has united all heads and hearts in their eulogy." It is understood that the correspondence was by Marshall. Gerry had allowed himself in a measure to be detached by the Directory from his associates, to their great displeasure. With them, in important respects, he disagreed.

It was in 1798 that Adams offered to Marshall the seat on the Supreme Bench, made vacant by the death of James Wilson. He declined it ; and it went to his old associate at William and Mary College, Bushrod Washington. Marshall did yield, however, to General Washington's urgent request to stand for Congress that year ; and apparently it was for a consultation on this question that he went to Mount Vernon, in the summer, in company with the coming judge. On their way they met with a misadventure which gave great amusement to Washington, and of which he enjoyed telling his friends. They came on horseback, and carried but one pair of saddlebags, each using one side. Arriving thoroughly drenched by rain, they were shown to a chamber to change their garments. One opened his side of the bags and drew forth a black bottle of whiskey. He insisted that he had opened his compan-

ion's repository. Unlocking the other side, they found a big twist of tobacco, some corn bread, and the equipment of a pack saddle. They had exchanged saddlebags with some traveler, and now had to appear in a ludicrous misfit of borrowed clothes.

The election of Marshall to Congress excited great interest. Washington heartily rejoiced in it. Jefferson, on the other hand, remarked that while Marshall might trouble the Republicans somewhat, yet he would now be unmasked. He had been popular with the mass of the people, Jefferson said, from his "lax, lounging manners," and with wiser men through a "profound hypocrisy." But now his British principles would stand revealed.

The New England Federalists were very curious about him ; they had been alarmed and outraged, during the campaign, by his expressing opposition to the alien and sedition laws ; but they were much impressed by him. Theodore Sedgwick wrote to Rufus King that he had "great powers, and much dexterity in the application of them. . . . We can do nothing without him." But Sedgwick wished that "his education had been on the other side of the Delaware." George Cabot wrote to King : "General Marshall is a leader. . . . But you see in him the faults of a Virginian. . . . He thinks too much of that state, and he expects that the world will be governed by rules of logic." But Cabot hopes to see him improve, and adds, "He seems calculated to act a great part." In the end, the Northern Federalists were disappointed in finding him too moderate. He held the place of leader of the House, and passed into the Cabinet in May, 1800 ; and on January 31, 1801, he was commissioned as Chief Justice.

Very soon after entering upon his duties as Chief Justice he undertook to write the Life of Washington. This gave him a great deal of trouble and mortification. It proved to be an im-

mense labor; the publishers were importunate, and he was driven into print before he was ready. The result was a work in five volumes, appearing from 1802 to 1804, full of the most valuable and authentic material, well repaying perusal, yet put together with singular lack of literary skill, and in many ways a great disappointment. In the later years of his life, he revised it, corrected some errors, shortened it, and published it in three volumes: one of them as a separate preliminary history of the colonial period, and the other two as the *Life of Washington*. This work, in its original form, gave great offense to Jefferson, written, as it was, from the point of view of a constant admirer and supporter of the policy of Washington: a "five volume libel," Jefferson called it.

Jefferson had a ludicrous misconception as to Marshall's real character. Referring in 1810 to the "batture" case, in which Edward Livingston sued him, and which was to come before Marshall, he says that he is certain what the result of the case should be, but nobody can tell what it will be: for "the Judge's mind [is] of that gloomy malignity which will never let him forego the opportunity of satiating it upon a victim. . . . And to whom is my appeal? From the judge in Burr's case to himself and his associate justices in *Marbury v. Madison*. Not exactly, however. I observe old Cushing is dead. [Judge Cushing had died a fortnight before.] At length, then, we have a chance of getting a Republican majority in the Supreme Judiciary." And he goes on to express his confidence in the "appointment of a decided Republican, with nothing equivocal about him."

Who was to be this decided and unequivocal Republican? Jefferson was anxious about it, and wrote to Madison, suggesting Judge Tyler, of Virginia, and reminding the President of Marshall's "rancorous hostility to his country." Who was it, in fact, that was appointed?

Who but Joseph Story! — a Republican, indeed, but one whom Jefferson, in this very year, was designating as a "pseudo-Republican," and who soon became Marshall's warmest admirer and most faithful supporter.

In those efforts on the part of some of the leaders of Virginia and the South, early in the century, to rid themselves of slavery, to which we at the North have never done sufficient justice, Marshall took an active part. The American Colonization Society was organized in 1816 or 1817, with Bushrod Washington for president. In 1823 an auxiliary society was organized at Richmond, of which Marshall was president, an office which he held nearly or quite up to the time of his death. It is interesting to observe that one of the plans for colonization was to have worked out the abolition of slavery in Virginia in the year 1901. Of slavery Marshall wrote to a friend, in 1826: "I concur with you in thinking that nothing portends more calamity and mischief to the Southern states than their slave population. Yet they seem to cherish the evil, and to view with immovable prejudice and dislike everything which may tend to diminish it. I do not wonder that they should resist any attempt, should one be made, to interfere with the rights of property, but they have a feverish jealousy of measures which may do good without the hazard of harm, that, I think, very unwise."

As to Marshall's religious affiliations, he was a regular and devoted attendant, all his life, of the Episcopal church, in which he was brought up; taking an active part in the services and the responses, and kneeling in prayer, we are told, even when the pews were so narrow that his tall form had to be accommodated by the projection of his feet into the aisle. His friend, Bishop Meade, the Episcopal bishop of Virginia, states that he was never a communicant in that church; and he quotes a letter from an Episcopal

clergyman who often visited Mrs. Harvie, Marshall's only daughter, in her last illness, and who reports from her the statement that, during the last months of his life, he told her the reason that he had never joined the Episcopal church, namely, that he was a Unitarian in opinion. It is added, however, in the same letter, that Mrs. Harvie, a person "of the strictest probity, the most humble piety, and the most clear and discriminating mind," also said that, during these last months, Marshall read Keith on Prophecy, and was convinced by that work, and the fuller investigation to which it led, of the Supreme Divinity of Jesus, and wished to commune, but thought it his duty to do it publicly; and while waiting for the opportunity, died.

The reader of such a statement seems to perceive or to conjecture an anxiety to relieve the memory of the Chief Justice of an opprobrium. Whatever the exact fact may be about this late change in opinion, we, in the latitude of New England, are not likely to be surprised or shocked that Marshall shared, during his active life, the speculative opinions of his friend Judge Story.

We often hear of the Chief Justice at his "Quoit Club." He was a famous player at quoits. A club had been formed by some of the early Scotch settlers of Richmond, and it came to include among its members leading men of the city, such as Marshall, Wirt, Nicholas, Call, Munford, and others. Chester Harding, the artist who painted the full-length portrait of Marshall that hangs in the Harvard Law School, tells us of seeing him at the Quoit Club. Fortunately, language does not, like paint, limit the artist to a single moment of time. He gives us the Chief Justice in

action. Marshall was then attending the Virginia Constitutional Convention, which sat from October, 1829, to January, 1830. The Quoit Club used to meet every week in a beautiful grove, about a mile from the city. Harding went early. "I watched," he says, "for the coming of the old chief. He soon approached, with his coat on his arm and his hat in his hand, which he was using as a fan. He walked directly up to a large bowl of mint julep, which had been prepared, and drank off a tumblerful of the liquid, smacked his lips, and then turned to the company with a cheerful 'How are you, gentlemen?' He was looked upon as the best pitcher of the party, and could throw heavier quoits than any other member of the Club. The game began with great animation. There were several ties; and before long I saw the great Chief Justice of the United States down on his knees, measuring the contested distance with a straw, with as much earnestness as if it had been a point of law; and if he proved to be in the right, the woods would ring with his triumphant shout."<sup>1</sup>

An entertaining account has been preserved<sup>2</sup> of a meeting of the Club, held, apparently, while Marshall was still at the bar, at which he and Wickham — a leading Virginia lawyer, one of the counsel of Aaron Burr — were the caterers. At the table Marshall announced that at the last meeting two members had introduced politics, a forbidden subject, and had been fined a basket of champagne, and that this was now produced, as a warning to evil doers; as the Club seldom drank this article, they had no champagne glasses, and must drink it in tumblers. Those who played quoits retired, after a while, for a game. Most

<sup>1</sup> In speaking of this same Club, Mr. G. W. Munford says: "We have seen Mr. Marshall, in later times, when he was Chief Justice of the United States, on his hands and knees, with a straw and a penknife, the blade of the knife stuck through the straw, holding it between

the edge of the quito and the hub; and when it was a very doubtful question, pinching or biting off the ends of the straw, until it would fit to a hair."

<sup>2</sup> In *The Two Parsons*, by G. W. Munford.

of the members had smooth, highly polished brass quoits. But Marshall's were large, rough, heavy, and of iron, such as few of the members could throw well from hub to hub. Marshall himself threw them with great success and accuracy, and often "rang the meg." On this occasion Marshall and the Rev. Mr. Blair led the two parties of players. Marshall played first, and rang the meg. Parson Blair did the same, and his quoit came down plumply on top of Marshall's. There was uproarious applause, which drew out all the others from the dinner; and then came an animated controversy as to what should be the effect of this exploit. They all returned to the table, had another bottle of champagne, and listened to arguments: one from Marshall for his view, and one from Wickham for Parson Blair. The company decided against Marshall. His argument is a humorous companion piece to any one of his elaborate judicial opinions. He began by formulating the question, "Who is winner when the adversary quoits are on the meg at the same time?" He then stated the facts, and remarked that the question was one of the true construction and application of the rules of the game. The one first ringing the meg has the advantage. No other one can succeed who does not begin by displacing this first one. The parson, he willingly allowed, deserves to rise higher and higher in everybody's esteem; but then he must n't do it by getting on another's back in this fashion. That is more like leapfrog than quoits. Then, again, the legal maxim is, *Cujus est solum, ejus est usque ad colum*. His own right as first occupant extends to the vault of heaven; no opponent can gain any advantage by squatting on his back. He must either bring a writ of ejectment, or drive him out *vi et armis*. And then, after further argument of the same sort, he asked judgment, and sat down amidst great applause.

Mr. Wickham then rose, and made an argument of a similar pattern. No rule, he said, requires an impossibility. Mr. Marshall's quoit is twice as large as any other; and yet it flies from his arm like the iron ball at the Grecian games from the arm of Ajax. It is an iron quoit, unpolished, jagged, and of enormous weight. It is impossible for an ordinary quoit to move it. With much more of the same sort, he contended that it was a drawn game. After very animated voting, designed to keep up the uncertainty as long as possible, it was so decided. Another trial was had, and Marshall clearly won.

All his life he played this game. There is an account of a country barbecue in the mountain region, where a casual guest saw an old man emerge from a thicket which bordered a brook, carrying a pile of flat stones as high as he could hold between his right arm and his chin. He stepped briskly up to the company and threw them down. "There! Here are quite enough for us all."

Of Marshall's simple habits, remarkable modesty, and engaging simplicity of conduct and demeanor, every one who knew him speaks. "What was it in him which most impressed you?" asked one of his descendants, now a distinguished judge, of an older relative who had known him. "His humility," was her answer. "With Marshall," wrote President Quincy, "I had considerable acquaintance during the eight years I was member of Congress, from 1805 to 1813, played chess with him, and never failed to be impressed with the frank, cordial, childlike simplicity and unpretending manner of the man, of whose strength and breadth of intellectual power I was . . . well apprised."

"Nothing was more usual," we are told, as regards his life in Richmond, "than to see him returning from market, at sunrise, with poultry in one hand and a basket of vegetables in the other."

And again, some one speaks of meeting him on horseback, at sunrise, with a bag of seeds before him, on his way to his farm, three or four miles out of town. This was the farm at which, as he writes to James Monroe, his old friend and schoolmate, "I pass a considerable portion of my time in *laborious relaxation*." The Italics are his own.

In speaking of Marshall's personal qualities and ways, I must quote from the exquisite passages in Judge Story's address, delivered in the fall of 1835, to the Suffolk Bar, in which his own true affection found expression: "Upon a first introduction he would be thought to be cold and reserved; but he was neither the one nor the other. It was simply a habit of easy taciturnity, watching, as it were, his own turn to follow the line of conversation, and not to presume to lead it. . . . Meet him in a stage-coach as a stranger, and travel with him a whole day, and you would only be struck with his readiness to administer to the accommodation of others, and his anxiety to appropriate least to himself. Be with him the unknown guest at an inn, and he seemed adjusted to the very scene; partaking of the warm welcome of its comforts, whenever found; and if not found, resigning himself without complaint to its meanest arrangements. He had great simplicity of character, manners, dress, and deportment, and yet with a natural dignity that suppressed impertinence and silenced rudeness. His simplicity . . . had an exquisite naïveté, which charmed every one, and gave a sweetness to his familiar conversation approaching to fascination. The first impression of a stranger, upon his introduction to him, was generally that of disappointment. It seemed hardly credible that such simplicity should be the accompaniment of such acknowledged greatness. The consciousness of power was not there; the air of office was not there;

there was no play of the lights or shades of rank, no study of effect in tone or bearing."

Of Marshall's appearance on the bench we have a picture in one of Story's letters from Washington, while he was at the bar. He is writing in 1808, the year after the Burr trial. "Marshall," he says, "is of a tall, slender figure, not graceful or imposing, but erect and steady. His hair is black, his eyes small and twinkling, his forehead rather low, but his features are in general harmonious. His manners are plain, yet dignified; and an unaffected modesty diffuses itself through all his actions. His dress is very simple, yet neat; his language chaste, but hardly elegant; it does not flow rapidly, but it seldom wants precision. In conversation he is quite familiar, but is occasionally embarrassed by a hesitancy and drawing. . . . I love his laugh, — it is too hearty for an intriguer, — and his good temper and unwearied patience are equally agreeable on the bench and in the study."

Daniel Webster, in 1814, wrote to his brother: "There is no man in the court that strikes me like Marshall. He is a plain man, looking very much like Colonel Adams, and about three inches taller. I have never seen a man of whose intellect I had a higher opinion."

In the year 1808, when Judge Story wrote what has been quoted above, Marshall was sketched in chalk by St. Me-min. It is a beautiful portrait, which its present owner, Mr. Thomas Marshall Smith, of Baltimore, John Marshall's great-grandson, has generously permitted to be copied for the use of the public.<sup>1</sup>

It was in 1830 that Chester Harding, the artist, painted for the Boston Athenæum the full-length portrait of which, a little later, he made the replica afterwards purchased, by subscription, for the Law School. "I consider it," says Harding in photogravure is Mr. C. Klackner, of New York.

<sup>1</sup> Some of my readers will thank me for saying that the dealer who furnishes this portrait



ing, "a good picture.<sup>1</sup> I had great pleasure in painting *the whole* of such a man. . . . When I was ready to draw the figure into his picture, I asked him, in order to save time, to come to my room in the evening. . . . An evening was appointed; but he could not come until after the 'consultation,' which lasts until about eight o'clock." It will be remembered that the judges, at that time, used to lodge together, in one house. "It was a warm evening," continues Harding, "and I was standing on my steps waiting for him, when he soon made his appearance, but, to my surprise, without a hat. I showed him into my studio, and stepped back to fasten the front door, when I encountered [several gentlemen] who knew the judge very well. They had seen him passing by their hotel in his hatless condition, and with long strides, as if in great haste, and had followed, curious to know the cause of such a strange appearance. . . . He said that the consultation lasted longer than he expected, and he hurried off as quickly as possible to keep his appointment with me." He declined the offer of a hat on his return. "Oh no, it is a warm night; I shall not need one."

The next year, 1831, was a sad one for Marshall. The greatest apprehensions were felt for his health. "Wirt," says John Quincy Adams in his Diary, on February 13, 1831, "spoke to me, also, in deep concern and alarm at the state of Chief Justice Marshall's health." In the autumn he went to Philadelphia to undergo the torture of the operation of lithotomy, before the days of ether. It was the last operation performed by the distinguished surgeon Dr. Physick. Another eminent surgeon, who assisted him, Dr. Randall, has given an account of this occasion, in which he says:—

"It will be readily admitted that, in

consequence of Judge Marshall's very advanced age, the hazard attending the operation, however skillfully performed, was considerably increased. I consider it but an act of justice, due to the memory of that great and good man, to state that, in my opinion, his recovery was in a great degree owing to his extraordinary self-possession, and to the calm and philosophical views which he took of his case, and the various circumstances attending it.

"It fell to my lot to make the necessary preparations. In the discharge of this duty I visited him on the morning of the day fixed on for the operation, two hours previously to that at which it was to be performed. Upon entering his room I found him engaged in eating his breakfast. He received me with a pleasant smile upon his countenance, and said: 'Well, doctor, you find me taking breakfast, and I assure you I have had a good one. I thought it very probable that this might be my last chance, and therefore I was determined to enjoy it and eat heartily.' I expressed the great pleasure which I felt at seeing him so cheerful, and said that I hoped all would soon be happily over. He replied to this that he did not feel the least anxiety or uneasiness respecting the operation or its results. He said that he had not the slightest desire to live, laboring under the sufferings to which he was then subjected; that he was perfectly ready to take all the chances of an operation, and he knew there were many against him; and that if he could be relieved by it he was willing to live out his appointed time, but if not, would rather die than hold existence accompanied with the pain and misery which he then endured.

"After he finished his breakfast I administered to him some medicine; he

<sup>1</sup> The half-length, sitting portrait of Marshall, in the dining hall at Cambridge, was painted by Harding, in 1828, for the Chief Justice himself; and by him given to Judge Story,

"to be preserved, when I shall sleep with my fathers, as a testimonial of sincere and affectionate friendship." Story bequeathed it to the college.



then inquired at what hour the operation would be performed. I mentioned the hour of eleven. He said, 'Very well; do you wish me now for any other purpose, or may I lie down and go to sleep?' I was a good deal surprised at this question, but told him that if he could sleep it would be very desirable. He immediately placed himself upon the bed, and fell into a profound sleep, and continued so until I was obliged to rouse him in order to undergo the operation. He exhibited the same fortitude, scarcely uttering a murmur, throughout the whole procedure, which, from the peculiar nature of his complaint, was necessarily tedious."

From the patient over a thousand calculi were taken. He had a perfect recovery; nor did the disorder ever return.

On Christmas Day of that year, as I have said, his wife died, the object of his tenderest affection ever since he had first seen her, more than fifty years before.

It was at this period, in 1831 and 1832, that Inman's fine portrait of him, now hanging in the Law Institute of Philadelphia, was painted, for the bar of that city. A replica is on the walls of the state library in Richmond, which Marshall himself bought for one of his sons. This portrait is regarded as the best of those painted in his later life. Certainly it best answers the description of him by an English traveler, who, seeing him in the spring of 1835, remarked that "the venerable dignity of his appearance would not suffer in comparison with that of the most respected and distinguished-looking peer in the British House of Lords."

After his recovery, in 1831, Marshall seems to have been in good health down to the early part of 1835. Then, we are told, he suffered "severe contusions"<sup>1</sup> in the stagecoach in returning from Washington. His health now rapidly declined. He went again for relief to Philadelphia, and died there on July 6, 1835, of a serious disorder of the liver. He had missed from his bedside his oldest son, Thomas, for whom he had been asking. Upon the gravestone of that son, behind the old house at Oakhill, you may read the pathetic tragedy, withheld from his father, that accounts for his absence. While hastening to Philadelphia, at the end of June, he was passing through the streets of Baltimore in the midst of a tempest, and was killed by the falling of a chimney in the storm.

The body of the great Chief Justice was carried home with every demonstration of respect and reverence. It was buried by the side of his wife, in the Shockoe Hill Cemetery in Richmond. There, upon horizontal tablets, are two inscriptions of affecting simplicity, both written by himself. The first runs thus: "John Marshall, Son of Thomas and Mary Marshall, was born the 24th of September, 1755, Intermarried with Mary Willis Ambler, the 3d of January, 1783. Departed this life the [6th] day of July, 1835." The second, thus: "Sacred to the memory of Mrs. Mary Willis Marshall, Consort of John Marshall, Born the 13th of March, 1766, Departed this life the 25th of December, 1831. This stone is devoted to her memory by him who best knew her worth, And most deplores her loss."

*James Bradley Thayer.*

<sup>1</sup> Many a "severe contusion" must he have suffered in those primitive days, from upsets and joltings, in driving every year between Richmond and Washington, some 120 miles each way; from Richmond to Raleigh and back, in attending his North Carolina circuit, about 175 miles each way; and between Rich-

mond and Oakhill, his country place, every summer, about 100 miles each way. For instance, in 1812, Cranch, the reporter, remarks that Marshall was not present at the beginning of the term, as he "received an injury by the oversetting of the stagecoach on his journey from Richmond."



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